

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Docket No.: ATM-2244

Applicant : Wilfried JUD et al.

Serial No. : 09/505,713

Examiner: Monique R. Jackson

Filed : February 17, 2000

Art Unit: 1773

Title : STERILIZABLE COMPOSITE FILM

SUPPLEMENTAL AMENDMENT

Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

This supplemental amendment reports the content of the interview and responds to the Advisory Action of March 25, 2002. The executed declaration of Hans P. Breitler regarding U.S. Patent No. 5,589,275 is enclosed. During the interview the Examiner said that she would consider such a declaration.

The undersigned attorney thanks Examiner Monique R. Jackson for the courtesy of the interview on March 7, 2002, and for allowing the earlier re-schedulings of the interview. The interview focused on lines 9 to 45 of column 4 of Breitler et al. and meanings of such disclosure. The Examiner contended that such text referred to a sealable (e.g., polypropylene) layer and/or a barrier layer on each side of the plastic layer. The undersigned attorney advanced that such text restricted sealable layers to the outside surface of the plastic layers of the composite material and did not teach sealable layers being between the plastic layers and the metal foil. The undersigned attorney asked about submitting a declaration by an inventor of Breitler et al. which stated that such text meant the barrier layers were located only on the outside of the plastic layers in the composite material, and the Examiner indicated that such a declaration probably would establish that

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the sealable layers were restricted to being outer sides of the plastic layers in the composite material away from the metal foil.

Hans Breitler is the first-listed joint inventor in U.S. Patent No. 5,589,275 (Breitler et al.). In his enclosed declaration, Mr. Breitler asserts that Breitler et al. discloses the barrier layers only being located on the outer or outside surface of the plastic layers (as opposed to the inner or inside surface) in the composite material, and that any other attempted interpretation of the Breitler et al. invention/disclosure is incorrect.

Breitler et al. involves a composite material for the base part of blister packs for use in freeze drying applications for foodstuffs and pharmaceuticals. The basic structure of the composite material is a metal layer (foil) with a plastic layer on each side thereof. The plastic layers contain or comprise polyamide-based thermoplastics. Breitler et al. does not teach or suggest the inclusion of a polypropylene layer (or other sealing/sealable layer) between either or both of the plastic layers and the metal layer. The joint inventors of the composite material of Breitler et al. did not disclose or contemplate that their involved invention included a polypropylene layer (or other sealing/sealable layer) between either or both of the plastic layers and the metal layer.

In his declaration, Mr. Breitler states that the text in lines 9 to 45 of column 4 of U.S. Patent No. 5,589,275 only refers to the optional presence of a sealing/sealable layer on the outside surface of either or both of the plastic layers in the composite material itself. Mr. Breitler further states that such text in column 4 does *not* refer, as such, to the presence of a sealing layer on one or both sides of either or both plastic layers separate from the basic structure of the composite.

In his declaration, Mr. Breitler states that there is *no* teaching of a sealing layer between either or both plastic layers and the metal layer (the basic composite material

structure) in the text in lines 9 to 45 of column 4 of Breitler et al. Mr. Breitler also states that all references to sealing layers in such text in Breitler et al. are exclusively to sealing layers, located on the outer surfaces of the composite material, i.e., on the outer surface of the plastic layers of the composite material.

In his declaration, Mr. Breitler, referring to the text in lines 9 to 13 of column 4 of Breitler et al., states that such text is *not* discussing the plastic layers by themselves but only as components in the structure of the basic composite material; that the use of the phrase "outer lying sealable layer" refers only to the outside surfaces of the basic composite material (i.e., the outside surface of each of the plastic layers); and that the words "outer lying" refer only to the side of each of the plastic layers away from the metal foil. Mr. Breitler also states: that the phrase "on outer lying sealable layer and/or a barrier layer" restricts the sealable layer to the outside surface of the plastic layers in the composite material; that the term "outer lying" does not modify the barrier layer; and that the term "outer lying" does not modify "a barrier layer", but restricts the location of the "sealable layer" to the outside surface of the plastic layer away from the metal foil. Mr. Breitler further states: that, when the inventors meant that a substance or layer could be located between a plastic layer and the metal layer, the text of Breitler et al. clearly says or indicates so; see column 4, lines 46 to 61, of Breitler et al.; and that such text recites that the barrier layer can be between one of the plastic layers and the metal foil.

In his declaration, Mr. Breitler states: that in lines 36 to 45 of column 4 of Breitler et al. the text only discusses the basic composite material, placement of a sealable layer on the outer or outside surface of at least one of the plastic layers in the basic composite; and that such text does *not* refer to one or both sides of a plastic layer (in the composite

material) having a sealable layer thereon – such is not part of the invention described in Breitler et al.

The purpose of the sealing layer is to facilitate affixing together container to the lid.
The Breitler declaration states:

“The following information further shows that, in U.S. Patent No. 5,589,275, no sealing layer is arranged between the metal foil and the polyamide layer. The single purpose of the sealing layer of U.S. Patent No. 5,589,275 is to secure a lid on top of the base part of a packaging formed by the composite of said patent.

Therefore, the sealing layer always forms the outermost layer of a base part made from the composite and the sealing layer has a free surface. Depending on the kind of plastic film, the sealing layer is a necessity, otherwise it would not be possible to safely fix or seal the lid to the base part of a packaging. In other words, the sealing layer has to be exposed to the outside to meet the lid. This information is supported in U.S. Patent No. 5,589,275, at column 7, lines 44 to 47, column 7, lines 62 to 67 (another sealing layer having a free surface at the lid to meet the base part is mentioned), and column 8, lines 19 to 21.” [Page 6]

The Breitler declaration clearly shows that it is incorrect to attribute to Breitler et al. any teaching of a sealing layer anywhere but as the outer layer of the composite.

The Advisory Action stated that applicants' request for reconsideration filed on February 25, 2002 has been considered but is not persuasive. The Office Action stated: that applicants argue that the Examiner's interpretation of Breitler et al. is incorrect, that nowhere does Breitler et al. disclose a polypropylene layer between a metal layer and a polyamide layer, and that the recitation at column 4 of Breitler et al. only teaches polypropylene layers on the outer sides of the composite and not between the polyamide

layer and the metal layer; and that, however, the Examiner maintains her position with regards to Breitler et al. and specifically points to lines 36 to 44 of column 4 of Breitler et al. which read:

“A single or double-sided sealable composite is obtained by single or double-sided coextrusion of the plastic layers with e.g. a polypropylene/polyethylene copolymer.”

“In that connection it is useful for the plastic layers to contain or comprise of a polyamide-based thermoplastic to feature a sealing layer on at least one side i.e. each layer of polyamide-based thermoplastic may be covered with a sealable layer on one or both sides, independent of the other layers.” [Emphasis added]

This portion of Breitler et al., according to the Breitler declaration, does not refer to one or both sides of a plastic layer having a sealable layer thereon, but instead refers to a sealable layer on the outer or outside surface of at least one of the plastic layers in the basic composite.

The Advisory Action stated that the above recitation clearly states each layer of polyamide may be provided on one or both sides with a sealable layer, or polypropylene per column 4, line 24, independent of the other layers, *not* that each layer of polyamide may be provided only on one side with a sealable layer such that the composite is provided with an outerlying sealable layer on one or both sides as interpreted by the applicants. Applicants disagree with this statement as being based upon an incorrect interpretation of the disclosure of Breitler et al. The Examiner’s interpretation contains the basic mistakes of not taking the entire first sentence into consideration (for example, “A...composite...”) and of taking the quoted portion, or more specifically, the italicized portions, out of context with the entire disclosure, object, etc., of Breitler et al. Joint-

inventor Breitler agrees that the Examiner's interpretation is incorrect and that the meaning asserted by the undersigned attorney is correct. Accordingly, the obviousness rejections are in error.

The Advisory Action stated that hence, the Examiner maintains her position that the invention taught by Breitler et al. does in fact teach the instantly claimed invention having the structure polyamide plastic layer/metal layer/polyamide plastic layer wherein each polyamide plastic layer may be provided on one or both sides with a sealable polypropylene/polyethylene layer independent of other layers by coextrusion, hence resulting in pp/pa/pp/metal foil/pp/pa/pp. Applicants traverse this statement for the above reasons. Breitler et al. does not teach or suggest applicants' claimed invention. The Breitler declaration shows that the obviousness rejections are in error and based on an erroneous interpretation of Breitler et al.

The Advisory Action stated that the Examiner further notes that her interpretation is consistent with what is understood in the packaging art, note specifically, the attached Muggli (U.S. Patent No. 5,968,663, commonly owned to Alusuisse Technology & Management) which also utilizes the same language as the commonly assigned Breitler et al. and further exemplifies polyethylene/polypropylene "sealable layers" (c, c¹, e and e¹) on both sides of the plastic layers (d and d¹), which are present on both sides of a central metal layer (a) (Abstract; Col. 3, line 42, to Col. 4, line 2; Col. 4, line 57 to 58). Applicants traverse this statement. What may be in Muggli is meaningless as to the disclosure of Breitler et al. – different inventions are involved. What counts is the disclosure of Breitler et al. The Breitler declaration establishes that the Examiner's interpretation of Breitler et al. is incorrect. Further note that Muggli does not use the location or position-restricting term "outer" or "outside".

During the interview the Examiner said that 6.13 of Ullman referred to opening sealed packages by peeling apart.

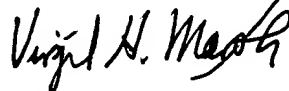
The Advisory Action stated that the Examiner only relied on Ullman to support her statement that extrusion laminating, lamination coating via adhesives, and coextrusion are conventional and well known methods of producing multilayer composite films and hence would have been obvious to one having ordinary skill in the art at the time of the invention. This does not meet the standard required by Section 103(a).

The Advisory Action stated that, therefore, the Examiner maintains her position with regards to the rejections recited in the prior Office Action wherein Breitler et al. does teach polypropylene layer(s) between the polyamide plastic layer(s) and the metal layer as previously discussed. Applicants traverse this statement, which the Breitler declaration establishes is incorrect.

The rejections should be withdrawn.

Reconsideration, reexamination and allowance of the claims are requested.

Respectfully submitted,



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